

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 21 of 1997

in

SPECIAL CIVIL APPLICATION No 881 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SURENDRANAGAR JOINT NAGARPALIKA

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS, senior counsel
with Mr.Variavar for Appellant
Mr.P.G.Desai, learned GOVERNMENT PLEADER for Respondent No. 1
Mr.H.P.Raval for
MR PM RAVAL for rest of the Respondents

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE J.R.VORA

Date of decision: 22/07/98

ORAL JUDGEMENT

1. Admit. Mr.P.G.Desai waives service of notice on behalf of respondent No.1 and Mr.H.P.Raval waives service of notice on behalf of rest of the respondents. On the request of the parties the matter is being decided finally.

2. This Letters Patent Appeal is directed against the judgment and order dated 11.9.96 passed by the learned single Judge in Special Civil Application No.881 of 1988 whereby the learned single Judge has dismissed the Special Civil Application and has discharged the Rule.

3. The facts leading to the present litigation may be given out in nut shell for a proper appreciation of the grievances raised in this case.

The then Princely State of Wadhwan had granted a lease for a period of 20 years to Bharat Tramway Company with regard to the land in question from the date of the commencement of the Tramway between Surendranagar and Wadhwan. The Tramway commenced on 1.4.33. The lease period of 20 years expired on 31.3.53. By that time the State of Saurashtra had come into existence and on 1.4.53 the State of Saurashtra renewed the aforesaid lease in favour of Bharat Tramway Company for a period of 10 years, which expired on 30.3.63. By this time the State of Gujarat had been created and this time the State of Gujarat extended the lease for yet another period of 10 years in favour of the respondent - Bharat Tramway Company and this extended lease period was to expire by the end of March 1973. It may be pointed out that right from 1.4.33 till September 1970 the Tramway was in operation between Surendranagar and Wadhwan and it has been pointed out that on 17.10.59 the Central Government had sent a letter to the Bharat Tramway Company with regard to monopoly price. The copy of this letter dt. 17.10.59 is available at Annexure '4' with the affidavit in reply filed on behalf of Bharat Tramway Company. In September 1970 there were heavy flood and on that account tracks of this Tramway was washed off, but the terminus at Surendranagar as well as Wadhwan with the structure, cabin etc. remained. The State of Gujarat, therefore, took over the rest of the area i.e. the area other than the 2 terminal points. The extended lease period of 10 years, as was granted by the State of Gujarat, expired on 31.3.73. The Bharat Tramway Company, therefore, applied on 4.5.73 to the State of Gujarat that the land relating to this Tramway, which had been taken over by the State of Gujarat, may be sold out to it on market rate as the Company had suffered serious losses on account of the

natural calamity of the heavy flood. The respondent Company had held the lease for a long period since 1933 and our attention has also been invited to the Resolution of the Government of Gujarat dt. 8.8.69 according to which certain concessions were to be given in the matter of purchase of the long term leased land. It appears that in the year 1973 the Government had tried to take the possession of the land and buildings from the respondent No.2 and, therefore, Special Civil Application No.904 of 1973 was preferred before this Court. On the basis of the statement made by the Assistant Government Pleader before the Court in the aforesaid Special Civil Application that the Competent Authority will give a notice under S.202 of the Bombay Land Revenue Code and hear the petitioner before taking any action in the direction of taking possession of the disputed property etc. the aforesaid Special Civil Application was withdrawn at that stage. It is given out that thereafter the Government had decided to grant the land to Bharat Tramway Company but the Assembly was dissolved and there was a President rule. During the President rule also it was decided to grant the land to the Company but there was again a change in the Governor's rule. Ultimately the Sub Committee of the Cabinet had taken a decision to grant the land so as to put an end to the long standing dispute and ultimately the Government passed an order dated 1.4.81 directing the Collector to pass an order in terms of the Government's decision. On the basis of the order, as aforesaid dt. 1.4.81, the land in question was sold out to the respondent No.2 by the concerned Collector on 7.4.81. It is this order dt. 7.4.81, which was challenged by the Surendranagar Joint Nagar Palika through Special Civil Application No.881 of 1992, which appears to have been filed on 24.11.81 as is mentioned in the order dated 11.9.96 passed by the learned single Judge.

4. The appellant - Municipality has challenged this order dt.7.4.81 on the ground that the land in question is included in the Municipal area and the Government had chalked out a Plan for utilisation of the open land for public purpose and that the Resolution to that effect had been passed on 10.9.81 and further that the land was earmarked for public use by the Municipality with expansion of road etc. and that the Government could not sell out this land to the Company without hearing the Municipality. It has also been alleged that the owner, namely, Trambaklal Dave was an elected M.L.A. and that he was also the Minister for the Local self Government at the relevant time and, therefore, the order had been passed under his undue influence.

5. Mr. Raval appearing on behalf of the respondent Company has pointed out that the Surendranagar Joint Nagar Palika has no claim over this land. This land was never vested in the Municipality. It was throughout a land, which vested in the State Government and the Municipality had no locus standi to challenge the transaction under Collector's order dated 7.4.81, under the authority of the Government's order dated 1.4.81. He has further submitted that the respondent - Company had applied for the permission to commence the construction before the appellant - Municipality and the appellant Municipality itself had issued No Objection Certificate for commencing the construction on 27.11.81. Thereafter, the Plans were submitted on 11.3.82, which were sanctioned on 12.3.82. It is further given out that on 15.3.82 the water connection was applied for and which too was granted by the very appellant Surendranagar Joint Nagar Palika and it is only thereafter that the construction was commenced and the same was completed and the Shopping Complex has already been constructed thereon since the end of 1983 when the construction was completed. While contesting the claim of the appellant Municipality with regard to the vesting of this land in the Municipality, Mr. Raval has placed heavy reliance on the reply, which has been filed in this case by the State of Gujarat itself and has also submitted that the Government of Gujarat had even taken No Objection from the Central Government. Our attention has been invited to a copy of the note, which is available in the record at page 145, which reads as under:-

"Please refer to your letter No.34/Guj/79-HMP dated the 30th April/1st May, 1979 regarding relinquishment or leasing of land at present occupied by M/s. Bharat Railway Company, Wadhwan City, to them.

I have had the matter examined and find that the ownership of the land asked for and at present occupied by the above Company vests with the State Government of Gujarat. You will thus appreciate that it is not possible for the Railway Administration to give it on lease or relinquish the same to Bharat Railway Company. The Party may, therefore, be asked to approach the State Government in the matter."

6. While making a pointed reference to the Government Order dt.1.4.81 at page 101-102 of the paper book our attention was invited to the affidavit-in-reply filed on behalf of respondent No.1 dt.26.4.82 wherein the Deputy Secretary to the Government of Gujarat, Buildings

and Communications Department, has stated as under:-

"I say that by Government Memorandum dated 1st April 1981, the State Government granted 414 sq.mtrs. of land to respondent No.2 including 44 sq.mtrs. of land on which the Respondent No.2 had put up the pucca and Kutcha structures during the lease period. I say that the said land was sold at the price of Rs.21/- per sq.mtr. Annexed hereto and marked Annexure 'XX' is a copy of the said Government Memorandum dated 1st April 1981."

In the end of para 8 of this very affidavit, the Deputy Secretary has stated that the possession of the said land was handed over to respondent No.2 in April 1981 after it paid the stipulated price. It is further stated in para 12 of this affidavit that the State Government had not made any grant of the land in question or any portion thereof to the petitioner - Municipality and that the order dated 7.4.81 only states that the land in question should be earmarked/reserved for widening the road subject to the terms and conditions in the Government Resolution dated 10.2.72 i.e. Annexure 'D' to the petition. Reference has then been made to the conditions laid down in the Government Resolution dt.10.2.72 and it has been stated that neither the State Government nor the Collector, Surendranagar had sanctioned grant of the land in question or any portion thereof to the Municipality. The Government was competent authority for granting the land to the Municipality and it had never sanctioned the grant or transfer of the land in question or any portion thereof to the Municipality. Condition No.4 has also been set out which reads as under:-

"(4) The Municipality shall draw up a time schedule of utilisation of the lands which Government has agreed to earmark and reserve for transfer to the Municipality. Earmarking and reservation of land for the Municipality being for a period of ten years,i.e. upto 31.3.1982, the time schedule should not be for any longer period. The Municipality shall submit a copy of its time schedule to Government and the Collector."

It has been then stated that no right had been created in favour of the petitioner - Municipality and after 31.3.82 the petitioner could not make any claim with regard to the alleged right as it failed to submit any time schedule as required under the Government instructions. It was also pointed out by Mr. Raval that Shri

Trambaklall Dave was an elected MLA and he became Minister only in May 1981 i.e. after the land had been sold out and that he had expired long back in October 1982 and he has also submitted that nothing was done under his influence.

7. Learned Government Pleader Mr. Desai appearing on behalf of the State of Gujarat has fully supported the case of the respondent - Company and on the basis of the pleadings contained in the reply it has been argued that the appellant - Municipality has nothing to do with this land and it has no locus standi.

8. We have considered the submissions, which have been made at the Bar and we have also gone through the order passed by the learned single Judge. The learned single Judge in his order has quoted the categorical admission of the Municipality that, "I may point out that even though the permission was granted and construction was required to be made within a period of one year, in fact, no such construction was made within a period of one year and, therefore, the said permission to construct had lapsed." The learned single Judge has mentioned that from this admission it is clear that the petitioner had sanctioned the Plan submitted by the Company, meaning thereby that it had accepted the correctness of the order of the Government, allotting this land to the Company. Notwithstanding such an admission we find that there is ample evidence on record in the form of documents, pleadings and the master plan of the Town Planning Department showing that this land never vested in the Municipality. The land throughout remained with the State Government and the State Government in accordance with its policy to consider cases of holding of leases for long period and also keeping in view the fact that the respondent in this case, which had rendered public utility services for years together, had sustained heavy losses on account of flood and, therefore, in accordance with its policy decision, to which reference had already been made herein-above, passed the order in April 1981 and accordingly the land is held by the respondent No.2 whereat the constructions had been completed way back in the year 1983. The point raised by the appellant Municipality that it was an open land and that it is required for widening the road is not at all tenable inasmuch as it is found that the entire land was not open land. There were terminus at both the points with structures thereon and the Municipality itself had granted permission to commence the construction. It also approved the plans for construction and only thereafter the construction commenced, it also gave permission for

water connection and the construction was started and completed by the end of 1983 because the Plan itself was sanctioned in 1982 and, therefore, nothing turns out on the basis of the grievance that the construction should have been completed within one year. The contention that the Municipality while sanctioning the Plans etc. had acted under the influence of the local self Minister afford no basis to the Municipality for the purpose of challenging its own order and it is settled that a party cannot attack its own order on such grounds. Be that as it may, Mr. Trambaklal Dave had expired long back in October 1982 and, therefore, if at all the Government wanted, it could have revoked its order on the representation by the Municipality. The Government has not done so and the Government Pleader has fully supported the case of the respondent - Company on the basis of pleadings. Moreover, there is no scope for the widening of the road now. The Map, which is annexed with the pleadings, shows that the road has already been widened to the extent it was possible and now there is no scope for further widening the road without demolishing the existing construction and it is too late now to consider the question of demolishing the existing construction since 1983, more particularly when we have come to the conclusion, on the basis of the pleading and record, that the land in question had never vested in the Municipality and in this view of the matter the decision of the Gujarat High Court in the case of Porbandar Nagarpalika v. State, reported in 1991(2) GLR 991 is of no avail to the appellant - Municipality in the facts of the present case.

9. We do not find any basis to interfere with the order passed by the learned single Judge. There is no merit in this Letters Patent Appeal. The same is hereby dismissed. Notice discharged. No order as to costs.